

Exhibit 19



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
(MAY 30, 2023
Defendants.) 8:30 A.M.

BENCH TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE

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1 THE COURT: Be seated, please.

2 All right. This is the time set for a bench trial
3 before the Court on the equitable defenses raised in the
4 Netlist versus Samsung Electronics matter. This is Civil Case
5 No. 2:21-CV-463.

6 As the parties will recall, the Court conducted a jury
7 trial in April of this year. At the conclusion of that trial
8 the jury returned a verdict, and post the return of the jury's
9 verdict, the Court is now prepared to take up in this bench
10 trial those equitable issues that were raised as a part of
11 this case. The Court's designated four hours of trial time
12 with two hours allocated to each side.

13 Let me ask for announcements from both sides and then
14 we'll proceed with the case in chief from Defendant Samsung.

15 What's the announcement from Plaintiff Netlist?

16 MS. TRUELOVE: Good morning, Your Honor. Jennifer
17 Truelove here for Plaintiff Netlist. With me today I have
18 Mr. Jason Sheasby, Steven Payne--they will be presenting today
19 on behalf of Plaintiff--and also at counsel table is our
20 client representative Mr. Scott Milton. And we're ready to
21 proceed, Your Honor.

22 THE COURT: All right. Thank you.

23 What's the announcement for Samsung, the Samsung
24 entities?

25 MS. DEGNAN: Good morning, Your Honor. Lauren

1 take a penalty of 10 minutes on our time to deal with it.

2 THE COURT: I'll determine if there's additional
3 time to be given. We're not -- Samsung's not at the end of
4 their rope yet.

5 MR. CORDELL: Thank you, Your Honor.

6 THE COURT: Let's go onto the next witness, please.

7 MR. SHEASBY: We call Seung-Mo Jung--2 minutes and
8 27 seconds, all charged to Netlist.

9 THE COURT: All right. Let's proceed with this next
10 witness by deposition.

11 SEUNG-MO JUNG,

12 BY VIDEO DEPOSITION

13 Q. Good morning, sir. Can you state your name for the
14 record?

15 A. My name is Seung-Mo Jung.

16 Q. Sir, you're employed by Samsung?

17 A. That's correct.

18 Q. What is your position at Samsung?

19 A. Senior engineer.

20 Q. You've been designated to speak on behalf of Samsung as
21 to technical topics relating to DDR4 LRDIMMs?

22 A. That's correct.

23 Q. Do you test to confirm that the RCDs and data buffers
24 comply with the JEDEC standard for LRDIMM DDR4?

25 A. You mean the RCD and DB?

1 Q. Yes.

2 A. Yes.

3 Q. Have you ever encountered any instances or sold any
4 LRDIMM DDR4s that did not implement the JEDEC standard for
5 LRDIMM DDR4?

6 A. No, I have not.

7 Q. Has Samsung?

8 A. Samsung has not.

9 Q. Sir, is there any position of Exhibit 1 that Samsung's
10 DDR4 LRDIMMs do not implement?

11 A. Do you mean Samsung's LRDIMM?

12 Q. Yes. Do you know if your DBs use tri-state buffers?

13 A. I don't know whether it uses internally within the DB.

14 Q. Do you test to determine if there is a tri-state buffer?

15 A. We test to test the operations that are defined in JEDEC.

16 Q. And you understand that JEDEC specifies a tri-state
17 buffer for the DBs?

18 A. Let me check. If you could tell me where in JEDEC it is
19 specified. I'm going to check that part.

20 Q. Let's go to the DDR4 data buffer standard logic diagram
21 4.6.1.

22 A. Okay. Please go ahead.

23 Q. The DB standard JEDEC standard specifies the use of
24 tri-state buffers. Those are the TX and RX triangles on the
25 right-hand side of this document.

1 A. To the extent of my knowledge, it doesn't specify here
2 that these are related to tri-state buffers.

3 THE COURT: Does that complete this witness?

4 MR. SHEASBY: It does, Your Honor.

5 THE COURT: Call your next witness, please.

6 MR. SHEASBY: Plaintiffs call Kyungsoo Park,
7 corporate representative of Samsung--3 minutes and 50 seconds,
8 all charged to Netlist.

9 THE COURT: Please proceed.

10 KYUNGSOO PARK,

11 BY VIDEO DEPOSITION

12 Q. Good morning, Mr. Park. Can you state your full name for
13 the record?

14 A. Kyungsoo Park.

15 Q. What is your position at Samsung LSI?

16 A. TL.

17 Q. What does TL stand for?

18 A. Technical leader.

19 Q. You said you are a technical leader. In which project or
20 which group are you the technical leader for?

21 A. I am in the group that works on PMIC for the DDR5.

22 Q. I have one question for you on Exhibit Number 2, page 13,
23 that's on the screen right now. In Section 2.1.1, the last
24 bullet point says: "3 LDO regulators: VBias, VOUT_1.8V, and
25 VOUT_11.0 volts. Do you see that?

1 Netlist never disclosed any JEDEC materials to the United
2 States Patent and Trademark Office."

3 The next supplemental response in November 2022, "Netlist
4 has not shown that any of the asserted claims are essential to
5 any JEDEC standard identified in Netlist's infringement
6 contentions. Samsung disagrees that any claim is essential
7 to any JEDEC standard, and incorporates its response to
8 Interrogatory No. 1."

9 THE COURT: All right. Now call your next witness.

10 MR. PAYNE: Yes, Your Honor. Netlist calls
11 Mr. Peter Gillingham.

12 THE COURT: All right. Mr. Gillingham, if you'll
13 come forward and be sworn, please.

14 (Whereupon, the oath was administered by the Clerk.)

15 THE COURT: Please have a seat at the witness stand,
16 sir.

17 MR. SHEASBY: May I approach the witness?

18 THE COURT: You may.

19 All right, counsel. You may proceed.

20 MR. PAYNE: Thank you, Your Honor.

21 PETER GILLINGHAM,

22 testified on direct examination by Mr. Payne as follows:

23 Q. Good afternoon. Could you please introduce yourself to
24 the Court?

25 A. My name is Peter Gillingham.

1 Q. What are you going to be testifying regarding today,
2 Mr. Gillingham?

3 A. I'm here to address Samsung's claim that Netlist did not
4 properly disclose the '918 and '054 Patents to JEDEC.

5 Q. Can you please describe your education?

6 A. Yes. I have a Bachelor's degree and a Master's degree in
7 engineering from Carleton University and a Master of Science
8 degree in management from Stanford University.

9 Q. After your education, where have you worked?

10 A. I first worked for six years at Mitel Semiconductor, and
11 in 1989 I moved to MOSAID Technology where I worked for 25
12 years.

13 Q. And what kind of company was MOSAID?

14 A. MOSAID was a small memory-focused company. In the
15 early days we designed memory products, and in later years
16 we transitioned to become a patent licensing company.

17 Q. And can you tell us a little bit about the work you did
18 at MOSAID?

19 A. When I first started, I was managing DRAM design teams,
20 designing DRAMs for our licensees. In about 2006 I became
21 chief technology officer of the company, and also became
22 MOSAID's named representative at JEDEC.

23 THE COURT: Mr. Gillingham, pull the microphone a
24 little closer to you, please. Thank you.

25 And did you get your master's at Stanford?

1 THE WITNESS: Stanford University, yes.

2 THE COURT: I just want to make sure I heard you
3 correctly.

4 Please continue, Mr. Payne.

5 Q. (BY MR. PAYNE) You mentioned being MOSAID's JEDEC
6 representative. Can you describe your experience attending
7 JEDEC meetings?

8 A. Well, I first started attending JEDEC meetings in the
9 1990s, but then I was not one of the named representatives of
10 MOSAID; I was just there as an observer or, as I would be
11 listed on the minutes of a JEDEC meeting, 'others present'.
12 But in 2006 I became -- I was named as the MOSAID
13 representative with authority to vote and make presentations
14 on behalf of MOSAID, so from that point on I would have been
15 listed under -- on meeting minutes as under the 'members
16 present' category.

17 Q. What JEDEC committees did you participate in?

18 A. We participated in JC-16, JC-42, JC-45, and JC-64.

19 Q. Do you have experience with patent disclosures at JEDEC?

20 A. Yes, I do.

21 Q. And have you been retained by Netlist to perform analysis
22 in this litigation?

23 A. Yes, I have.

24 Q. What did you review to prepare for your testimony today?

25 A. I reviewed Mr. Halbert's expert report, I reviewed the

1 JEDEC patent policy, and I reviewed numerous JEDEC documents
2 relating to Netlist's participation at JEDEC.

3 MR. PAYNE: Your Honor, Plaintiff offers
4 Mr. Gillingham as an expert on the JEDEC organization and
5 the procedures at JEDEC.

6 THE COURT: Any objection?

7 MR. McKEON: No objection, Your Honor.

8 THE COURT: Without objection, the Court will
9 recognize this witness as an expert in those designated
10 fields.

11 Please continue.

12 Q. (BY MR. PAYNE) Let's turn to the patents in the case.

13 Has Samsung expressed an understanding in the case about
14 whether disclosure of patents to JEDEC is required?

15 A. Yes, they have.

16 Q. And what understanding has Samsung expressed about
17 whether disclosure of patents to JEDEC is required?

18 A. Well, Mr. Kim, who was Samsung's JEDEC representative,
19 stated that JEDEC recommends disclosure, but it's not a
20 mandatory obligation.

21 Q. Do you recognize PX 1067?

22 A. Yes, I do. It is the JEDEC manual of organization and
23 procedure, JM21.

24 Q. And how does the JEDEC policy define an essential patent
25 claim?

1 A. An essential patent claim are those claims which would
2 necessarily be infringed by a product that is compliant with
3 required portions of an approved JEDEC standard. So it would
4 not include optional portions of a standard or examples or
5 reference designs, for example.

6 Q. Do you recall some testimony earlier this morning about
7 family members of the '918 and '054 Patents being disclosed to
8 JEDEC?

9 A. Yes, I do.

10 Q. Does the JEDEC policy say anything about whether
11 disclosure of a patent extends to other patents in the family?

12 A. Yes, it does.

13 Q. And what does the policy say?

14 A. The policy states that disclosure of a patent is deemed
15 to include all patents claiming priority to a single filing.

16 Q. Did Netlist disclose to JEDEC patents that claim priority
17 to the same filing as the '918 and '054 Patents?

18 A. Yes, they did.

19 Q. What patents in the '918 and '054 family did Netlist
20 disclose?

21 A. Netlist disclosed the '831 Patent and the '833 Patent,
22 which are parent patents of both the '918 and the '054
23 Patents.

24 Q. Now, when did Netlist disclose the '831 Patent to JEDEC?

25 A. Netlist first disclosed the '831 Patent to JEDEC in

1 February of 2015 on a notice of refusal to offer licenses on
2 RAND terms form, but they subsequently notified them again on
3 August 7th, 2018, of the same patent when they did agree to
4 RAND terms.

5 Q. And that 2018 form, that's PX 176?

6 A. That's correct.

7 Q. When did Netlist disclose the '833 Patent to JEDEC?

8 A. Netlist disclosed the '833 Patent to JEDEC on the same
9 dates and on the same forms as the '831 Patent; so in February
10 2015 on a notice of refusal to offer RAND licenses and on
11 August 2018 when they did agree to RAND licensing.

12 Q. What JEDEC committee did Netlist disclose the '831 and
13 '833 Patents to?

14 A. Netlist disclosed those patents to the JC-40 committee.

15 Q. Which JEDEC committee was responsible for preparing the
16 DDR5 component specification?

17 A. JC-40 was responsible for providing the PMIC -- the DDR5
18 PMIC specification.

19 Q. If a JEDEC member were attempting to determine what
20 patents had been disclosed relating to on-module power
21 management, what committees would they look at?

22 A. I think they would look first to the JC-40 committee
23 because the JC-40 committee standardizes components that go on
24 to a module, but they would also look to the JC-45 committee
25 because that's the committee that standardizes the overall

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1 | module.
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2 | Q. Would Samsung have been aware of activity in JC-40?

3 A. Of course they would. They were members of that
4 committee.

5 Q. And do you recall some testimony earlier today about
6 whether Netlist was required to redisclose the patents for
7 DDR5?

8	A. I do.
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9 Q. In the regular practice at JEDEC, is there a practice to
10 redisclose patents that have already been disclosed?

11 A. No, there's not a practice to redisclose patents relating
12 to a continuation of a prior standard to which the patent had
13 initially been disclosed.

14 Q. And why is it the practice not to redisclose for a
15 continuation of a prior standard?

16 A. Well, JEDEC participants would be well aware that -- if I
17 take the example of DDR4 and DDR5, that most if not all of the
18 features of DDR4 would be carried over into DDR5, and then
19 there would be some additional features added to achieve the
20 higher performance that -- you know, of DDR5. So the members
21 would be able to look at the past history of those features
22 through the previous versions of the standard.

23 Q. Do you have an understanding of whether DDR5 is a
24 continuation of the DDR4 standard?

25 | A. Yes. DDR5 is a continuation of the DDR4 standard.

1 Q. And how does JEDEC actually identify the DDR4 and DDR5
2 standards?

3 A. Well, they are identified by the standard number. So in
4 the case of DDR4, that is standard JESD79-4, and for DDR5, the
5 standard number is JESD79-5. So clearly the 5 is a
6 continuation of the 4.

7 Q. Now, has Samsung expressed a view in this case about
8 whether DDR5 is a continuation of DDR4?

9 A. Yes, they have.

10 Q. What view did Samsung express?

11 A. Well, Samsung's expert Mr. McAlexander stated that DDR5
12 DIMMs are an extension and further development of DDR4 DIMMs.

13 Q. Do you also recall some testimony earlier this morning
14 about a period where Netlist was withdrawn from JEDEC?

15 A. Yes, I do.

16 Q. How did the timing of Netlist's withdrawal coincide with
17 the development of the DDR5 PMIC standard?

18 A. My understanding is that the DDR5 PMIC standard was first
19 discussed at JEDEC in August 2016 during the period when
20 Netlist had withdrawn from those committees.

21 Q. And when did Netlist rejoin the JEDEC committees?

22 A. Netlist rejoined in August 2018.

23 Q. When was the approved DDR5 PMIC standard publicly
24 released?

25 A. The approved standard was publicly released in June 2020.

1 Q. When did Netlist begin to pursue patent claims regarding
2 on-module power management?

3 A. My understanding is that the first claims regarding
4 on-module power management were submitted with the application
5 ending in '766 in December 2020, which was after the DDR5 PMIC
6 standard had been publicly released.

7 Q. Is it the regular course of practice at JEDEC for a
8 company like Netlist to disclose patents when it was withdrawn
9 from JEDEC?

10 A. No, and it's -- it would not be the policy and it would,
11 frankly, be impossible because Netlist was not privy to the
12 discussions or the documents created during the time period
13 when they were absent.

14 Q. And is it the regular practice at JEDEC to disclose
15 potentially essential patents where claims have not yet been
16 filed?

17 A. Well, potentially essential patents are defined as those
18 that are reasonable -- a person could reasonably conclude
19 contain one or more essential patent claims, so if the claims
20 don't exist, there's really no obligation to disclose.

21 Q. Did Netlist take any action once it returned to the JEDEC
22 committees after its withdrawal?

23 A. Yes, they did. They immediately submitted RAND letters
24 for those patents.

25 Q. And in your experience, have technical discussions at

1 JEDEC ever stopped when a member discloses a patent that is
2 potentially essential to the technology being discussed?

3 A. In my experience, I have never witnessed that.

4 MR. PAYNE: Pass the witness, Your Honor.

5 THE COURT: All right. Cross examination by
6 Samsung?

7 MR. McKEON: Thank you, Your Honor.

8 May I proceed?

9 THE COURT: Please do.

10 MR. McKEON: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. McKEON:

13 Q. Good morning, Mr. Gillingham.

14 A. Good morning.

15 Q. You agree that the JEDEC patent policy contains a patent
16 disclosure provision. Correct?

17 A. Yes, it does.

18 Q. And you agree that under the JEDEC patent policy that if
19 a member knows of a patent that is relevant to a given
20 standard, that it must disclose that patent to JEDEC.
21 Correct?

22 A. If a member is aware of a potential essential patent,
23 which is defined as a patent that has claims that would read
24 on the standard, yes, the representative attending the
25 committee meeting has the obligation to disclose.

1 MR. McKEON: Sorry about that, Your Honor. I
2 thought we --

3 (Pause in proceedings.)

4 THE COURT: You can use the counsel table. You
5 don't need to get down on the floor, Mr. Sheasby.

6 MR. SHEASBY: Thank you, Your Honor.

7 DTX 14 is fine, Your Honor.

8 THE COURT: All right. So both of you have heard
9 the offering from the other. I gather there are no objections
10 to either's rendition into the record.

11 MR. McKEON: No objection, Your Honor.

12 MR. SHEASBY: No objections, Your Honor.

13 THE COURT: All right. Thank you, counsel. You're
14 excused.

15 As I stated earlier, the matters raised in the bench
16 trial are under submission.

17 MR. SHEASBY: Thank you, Your Honor.

18 MR. McKEON: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (The Proceedings were concluded at 2:30 p.m.)
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22
23
24
25